

## **REMARKS**

Applicants respectfully request entry of the following amendments and remarks contained herein in response to the Non-Final Office Action mailed February 6, 2006. Applicants respectfully submit that the amendment and remarks contained herein place the instant application in condition for allowance.

Upon entry of the amendments in this response, claims 31 – 47 remain pending. In particular, Applicants amend claims 31 – 33 and 35 – 38, add claims 42 – 47, and cancel claims 16, 18, and 23 – 30 without prejudice, waiver, or disclaimer. Applicants cancel claims 16, 18, and 23 – 30 merely to reduce the number of disputed issues and to facilitate early allowance and issuance of other claims in the present application. Applicants reserve the right to pursue the subject matter of these canceled claims in a continuing application, if Applicants so choose, and do not intend to dedicate the canceled subject matter to the public. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

### **I. Examiner Interview**

Applicants first wish to express their sincere appreciation for the time that Examiner Huang spent with Applicants' Attorney, Anthony Bonner during a telephone discussion on March 8, 2006 regarding the outstanding Office Action. During that conversation, Examiner Huang indicated that the 35 U.S.C. §112 rejection to claims 39 – 41 was made in error and that these claims may be considered allowable. Thus, Applicants respectfully request that Examiner Huang carefully consider this response and the amendments.

## **II. Allowable Subject Matter**

The Office Action indicates that claims 37 and 38 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the elements of the base claim and any intervening claims. Applicants sincerely appreciate the indication of allowable subject matter and incorporate claim 30 in to claims 37 and 38.

Applicants respectfully submit that claims 37 and 38, as amended are in condition for allowance.

Additionally, Applicants sincerely appreciate Examiner Huang's indication that claims 39 – 41 are allowable and respectfully request expedited allowance of the present application.

## **III. Voluntary Claim Amendments**

In addition, Applicants amend claims 31 – 33 and 35 – 36 to change their dependency from canceled claim 30 to claim 37. Applicants submit that these amendments are not made for purposes of patentability and thus should not be construed to invoke prosecution history estoppel. Applicants further submit that these claims are in condition for allowance.

## **IV. Rejections Under 35 U.S.C. §112**

The Office Action indicates that claims 28 – 29 and 39 – 41 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. As discussed above, however, Examiner Huang indicated that the 35 U.S.C. §112 rejection of claims 39 – 41 was made in error. Applicants sincerely appreciate Examiner Huang's removal of this rejection for claims 39 – 41. While Applicants respectfully traverse the rejection of claims 28 and 29, Applicants cancel these claims and consider this issue moot.

V. **Rejections Under 35 U.S.C. §103**

In order for a claim to be properly rejected under 35 U.S.C. §103, the teachings of the cited art reference must suggest all features of the claimed invention to one of ordinary skill in the art. See, e.g., *In re Dow Chemical*, 837 F.2d 469, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 642 F.2d 413, 208 U.S.P.Q. 871, 881 (C.C.P.A. 1981). Further, “[t]he PTO has the burden under section 103 to establish a prima facie case of obviousness. It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.” *In re Fine, Minnesota Mining and Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

A. **Claims 16, 18, and 23 – 25 are Patentable Over *Davis* and *Walters* in view of *Alonso***

The Office Action indicates that claims 16, 18, 23 – 25 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over U.S. Patent Number 5,867,793 (“*Davis*”) and WO 94/80951; PCT US93/04219; incorporated by *Davis* (“*Walters*”) in view of U.S. Patent Number 6,035,352 (“*Alonso*”). While Applicants respectfully traverse this rejection, Applicants cancel these claims and consider this issue moot.

B. **Claims 26 – 27 are Patentable Over *Davis* and *Alonso* in view of *Boursier***

The Office Action indicates that claims 26 – 27 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over *Davis* and *Alonso* as applied to independent claim 16, and

further in view of U.S. Patent Number 5,675,333 (“*Boursier*”). While Applicants respectfully traverse the rejection of claims 26 – 27 and 30, Applicants cancel these claims and consider this issue moot.

**C. Claims 30 – 34 are Patentable over Davis and Walters in view of Wohl**

The Office Action indicates that claims 30 – 34 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over *Davis* and *Walters* in view of U.S. Patent No. 5,247,700 (“*Wohl*”). While Applicants respectfully traverse the rejection of claim 30, Applicants cancel this claim and consider this issue moot. Additionally claims 31 – 34, as amended, are believed to be allowable for at least the reason that these claims depend from allowable independent claim 37. *In re Fine, Minnesota Mining and Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

**D. Claims 35 and 36 are Patentable Over Davis and Wohl in view of Boursier**

The Office Action indicates that claims 35 and 36 stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over *Davis* and *Wohl* as applied to independent claim 30, and further in view of *Boursier*. Applicants respectfully traverse this rejection for at least the reason that *Davis* and *Wohl* and further in view of *Boursier* fail to disclose, teach, or suggest all of the elements of claims 35 and 36. More specifically, Applicants submit that claims 35 and 36, as amended, are allowable for at least the reason that these claims depend from allowable independent claim 37. *In re Fine, Minnesota Mining and Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

**VI. New Claims 42 – 47 are Allowable**

In addition, Applicants add new claims 42 – 47. Applicants submit that new claims 42 – 47 are allowable for at least the reason that these claims depend from allowable independent claim 38. *In re Fine, Minnesota Mining and Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1299 (Fed. Cir. 2002).

## CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above,

Applicants respectfully submit that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested.

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Further, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known for at least the specific and particular reason that the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions.

If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,



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